

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION

DAVID SWINK

PLAINTIFF

v.

No. 1:13-cv-90-DPM

HARTFORD LIFE AND ACCIDENT
INSURANCE COMPANY

DEFENDANT

ORDER

Having removed the case because Swink asserts an ERISA claim, *No. 1*, Hartford now moves to dismiss Swink's amended complaint—saying it fails to state an ERISA claim, *No. 5*. Swink's state-law claim pursuant to ARK. CODE ANN. § 23-79-208 is preempted. *Fink v. Dakotacare*, 324 F.3d 685, 689 (8th Cir. 2003). But Swink has adequately pleaded an ERISA claim for long-term disability benefits from Arkansas Steel Associates, LLC's plan. A plaintiff's short and plain statement of his claim need not cite the governing statute. FED. R. CIV. P. 8; 5 WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE § 1219 at 277-78 (3d ed. 2004). As shown conclusively by the removal, Hartford has notice of exactly what this case is about. And Swink has now moved for leave to amend his complaint again to substitute an ERISA claim for his state-law

claim. No 7. The clarifying amendment is helpful, though not essential to preserving the case. Motion to amend, No 7, granted. FED. R. CIV. P. 15(a)(2). Second amended complaint due by 28 October 2013. Motion to dismiss, No 5, denied. The case needs to move forward on the merits.

So Ordered.

D.P. Marshall Jr.

D.P. Marshall Jr.
United States District Judge

24 October 2013